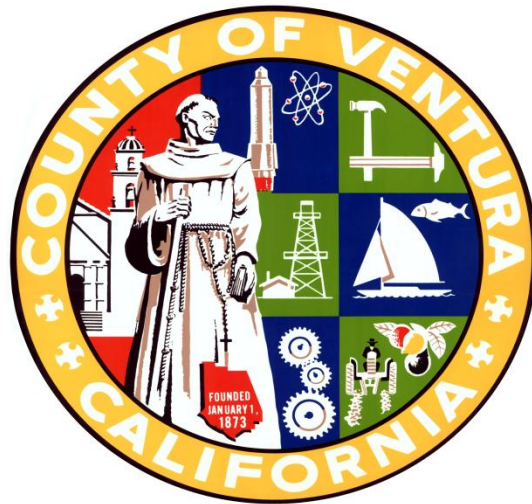


# **Ventura County Grand Jury 2012 - 2013**



## **Final Report**

### **Santa Paula Waste Water Treatment Plant**

**June 26, 2013**

*This page intentionally blank*

## **Santa Paula Waste Water Treatment Plant**

### **Summary**

Record low bond rates present the City of Santa Paula (City) a unique opportunity to purchase the City's waste water treatment plant (WWTP). The treatment plant is currently owned and operated by Pacific Environmental Resources Corporation (PERC).

The 2012-2013 Ventura County Grand Jury (Grand Jury) investigated the policies, procedures, and practices of the City administration as it relates to the WWTP. The California Regional Water Quality Control Board (RWQCB) sued the City to seek water quality improvements and received a Stipulated Consent Judgment and Final Order (Consent Decree) from the Ventura County Superior Court that required the City to have a new WWTP on-line by September, 2010 and to be in compliance by December, 2010.

In 2007, the City opened bidding for the proposed project. The two finalists in the bidding process were Santa Paula Water LLC, a subsidiary of PERC, and Veolia Water Operating Systems, Inc. (Veolia). It was found that several senior city Staff had ties to a major Veolia subcontractor; therefore, Santa Paula City Council (Council) hired an outside independent engineering firm, Carollo Engineering, (Carollo), for an assessment of the bids. The Council also hired the financial firm, FCS Group, (FCS) for a financial analysis of the bids.

The reports favored PERC, however, City Staff recommended Veolia. The Council had the choice of following city Staff recommendation or the Carollo report and FCS financial analysis.

At a Special Meeting on the court-imposed deadline of April 15, 2008 the Council asked the two final bidders if they wanted to amend their bids. Veolia chose not to amend their bid. PERC did amend their bid to include a future expansion of the facility at no cost to the City, a savings of several million dollars. On May 5, 2009 PERC further reduced their bid by approximately \$24.2 million, making PERC the lower bidder with full financing. PERC also offered the City a five-year buyout clause of the WWTP. On a split 3 to 2 vote, the Council chose PERC.

The Grand Jury found that the high levels of discharged chlorides which have plagued the Santa Clara River and the local agriculture was not addressed in the original proposal or contract.

The Grand Jury recommends that the City consider implementing the five-year buyout option offered by PERC and initiate the process forthwith to remove excess chlorides from the water.

## **Background**

In 2006, the RWQCB sued the City to replace the outdated WWTP that was originally built in the 1930's. The City agreed to the Consent Decree entered by the Ventura County Superior Court on September 24, 2007. The City was compelled to complete the design of the WWTP by April 15, 2008, and complete construction by December 2010.

The Grand Jury interviewed public officials, former public officials, members of the public and prominent local community leaders. During this review, evidence came to light that had never been disclosed in prior reports. This evidence related directly to the awarding of a contract for the design, building and operation of the City's WWTP. The Grand Jury reviewed the Carollo report and the FCS financial analysis.

The Council decided on a Design, Build, Finance and Operate (DBFO) 30 year contract, the proposed life of the WWTP. The Grand Jury found the Council had received considerable criticism for its choice of contractors for the new WWTP. Due to articles in the press and prior reports, the public perception seemed to be that the Council chose the more expensive contractor against the recommendation of Santa Paula City Staff.

The City was faced with meeting the Consent Decree deadline for awarding of the construction contract or risk fines of up to \$10,000 per day by the RWQCB. The final bidders were Veolia and PERC. Both had submitted their Best and Final Offers (BAFO) before the deadline. Several important city officials had ties to a major Veolia subcontractor. The Council decided to get an outside independent engineering assessment by Carollo. As there was a substantial financial commitment, the Council also chose to have a financial analysis done by an independent financial firm, FCS.

The Carollo report favored PERC because Veolia's design lacked redundancy for the coarse screens and grit removal and relied on a common blower to back up the aeration basins. The PERC proposal provided facilities to potentially produce Class B biosolids that would be acceptable for disposal at Ventura County's landfill drying station. Also, the PERC disinfection design produces unrestricted reuse water quality, whereas the Veolia design would require additional disinfection improvements to meet the requirements.

The FCS report stated that no guaranteed financing could be obtained for the Veolia bid in the "ultra-turbulent financial period" of 2008. Veolia's bid included an \$8 million construction loan with no long term financing. The selection of Veolia would require the sale of bonds for the cost of construction of the facility at a time when financial markets were in turmoil. PERC's bid included fixed 30 year financing.

City Staff originally recommended that the contract be awarded to Veolia due to the lower overall project cost and ratepayer cost as well as perceived contractor experience. Staff believed that bonds could still be obtained at a favorable rate.

A Special Meeting was called for the April 15, 2008, Consent Decree deadline. At this meeting, each firm had representatives present and was given the option of amending their BAFO. Veolia decided not to amend. PERC offered to pay for a planned future expansion of the WWTP, a saving to the City of approximately \$3 million. The Council decided in a 3 to 2 vote to award the contract to PERC considering:

- the Carollo engineering report
- the FCS financial analysis
- PERC’s offer to pay for the planned future expansion of the WWTP
- the use of less land for the PERC plant
- an aesthetically superior building
- an RV dump station for residents use

Neither the contract nor the construction addressed the high levels of chlorides in the waste water. Chlorides in the waste water are largely due to the widespread use of domestic water softeners that use salt. This byproduct of the water softeners has a negative effect on the downstream water. This also negatively affects the agricultural crop production.

Between April 15 and May 5, 2008, the Staff negotiated with PERC to further reduce its bid by approximately \$24.2 million. On May 5, 2008, a revised contract that was approximately \$1.9 million less than Veolia’s BAFO was approved by the same 3 to 2 Council vote.

The Council followed the consultant’s recommendations. The Council chose what it considered was the least financially risky choice that also had a superior waste water treatment process and a large financial savings. The Grand Jury found no evidence of wrongdoing by any member of the Council or the City Staff.

## **Methodology**

The Grand Jury investigation was conducted on the basis of interviews with public officials, contractors, water experts, farmers and concerned citizens of the Santa Paula area. The Grand Jury reviewed City documents, consultant reports, replies to reports and other documents. The Grand Jury also reviewed relevant newspaper articles from the *Santa Paula Times*, *Ventura County Star* and *The Los Angeles Times*, as well as Internet searches.

**Facts**

- FA-01.** RWQCB sued the City to seek water quality improvements in the court case of the "People ex rel. California Regional Water Quality Control Board, Los Angeles Region v City of Santa Paula." [Ref-01-04]
- FA-02.** A Consent Decree required the City to have the WWTP online by September 2010, and in compliance by December 2010. [Ref-01-04]
- FA-03.** In response to the RWQCB requirements, the City sought to provide the means by which the City's wastewater could be totally recycled or percolated, thus eliminating the surface discharge. [Ref-05]
- FA-04.** The finalists in the WWTP bids were PERC and Veolia. [Ref-06-09]
- FA-05.** Several senior members of the Staff had ties to a major Veolia subcontractor. The Council sought an independent analysis. [Ref-03, 10-13]
- FA-06.** The Council hired Carollo to evaluate the bids. Carollo's report favored PERC. [Ref-11, 14]
- FA-07.** The Council hired FCS to provide an independent financial analysis. The FCS analysis favored PERC. [Ref-10]
- FA-08.** City Staff recommended Veolia due to an overall lower price, lower user rates and perceived contractor experience. [Ref-07, 08, 15]
- FA-09.** A Special Meeting took place on April 15, 2008, to choose a final bidder. [Ref-06, 16]
- FA-10.** The Council chose the PERC bid, in part, after PERC agreed to enlarge the plant, when needed in the future, at no expense to the City. [Ref-06, 16]
- FA-11.** City Staff continued to negotiate terms and costs with PERC until May 5, 2008. [Ref-16, 17, 21, 23]
- FA-12.** On May 5, 2008, the Council, on a 3 to 2 vote approved the contract with PERC. [Ref-18-20]
- FA-13.** On the date of the award, May 5, 2008, Veolia's BAFO was \$127.4 million for thirty years and PERC's BAFO was \$125.5 million for thirty years. [Ref-02, 16-19, 21]
- FA-14.** The FCS financial analysis stated that Veolia's lower level of equity investment and reliance on debt financing would create uncontrollable costs to the City. In contrast, PERC would provide less variability in its financing plan and would include specific costs. [Ref-10, 16, 23]
- FA-15.** The Carollo engineering report found that the Veolia design lacks redundancy for the coarse screens and grit removal. The Veolia design also relies on a common blower to back up the aeration basins and the membrane bioreactor filtration system (MBR) tanks. [Ref-11, 14, 16]

- FA-16.** PERC provides facilities to potentially produce biosolids that would be acceptable for disposal at the County's landfill drying facility. [Ref-11, 16]
- FA-17.** The PERC ultraviolet disinfection design produces unrestricted reuse water quality, whereas, the Veolia design would require additional disinfection improvements to meet the RWQCB requirements. [Ref-11, 14, 16, 24]
- FA-18.** The final Council decision occurred on May 5, 2008, and was consistent with the revised recommendations of City Staff. [Ref-16, 21, 25]
- FA-19.** City Staff changed their recommendation to the PERC BAFO due to significant contract improvements subsequent to April 15, 2008. [Ref-16, 21, 25]
- FA-20.** PERC agreed to decrease the BAFO by \$24.2 million. Contract language had been modified to further protect the City's interests. With these changes, the Staff recommended that the City contract with PERC. [Ref-16, 19, 21, 25, 26]
- FA-21.** Energy saving measures that PERC has implemented since the award of the contract has reduced projected costs by approximately \$5 million over thirty years. [Ref-16]
- FA-22.** The Veolia bid offered a short-term construction loan to the City for approximately \$8 million which required the City to sell bonds for the entire construction costs. [Ref-10, 16]
- FA-23.** The year 2008 was a catastrophic time in the financial markets. Selling bonds in that business climate was difficult or impossible. [Ref 10, 16]
- FA-24.** PERC's contract provided for a future expansion when needed from 3.4 million gallons per day (MGD) to 4.2 MGD at no additional cost to the city. This provides capacity for approximately 3,200 additional homes and was valued at approximately \$3 million. [Ref-06, 16, 21, 25, 27]
- FA-25.** PERC provided a recreational vehicle (RV) dump station for residents' use valued at approximately \$100,000. [Ref-16]
- FA-26.** PERC's design used approximately seventy percent less land than the Veolia design. [Ref-14, 33]
- FA-27.** PERC provided guaranteed capital replacement cost for the term of the contract with no inflation risk to the City. [Ref-10, 16, 21, 25, 27]
- FA-28.** PERC had never built a MBR plant in California. PERC had performed over twenty design, build and operate (DBO) projects for the activated sludge processes. PERC's MBR consultant, Trussel Technologies, is a national leader in MBR technology. [Ref-14, 16, 28]
- FA-29.** PERC offered a buyout clause at five-year intervals for the thirty-year contract. [Ref-16-21, 23, 25, 26, 33]
- FA-30.** The City finances the WWTP at a variable rate; currently near eight percent.

- FA-31.** The City failed to address, in the PERC contract, the high levels of chloride in the WWTP discharge. [Ref-23, 29-34]
- FA-32.** The municipal bond market is now at the lowest level since the financial crisis in 2008. [Ref-36]

## **Findings**

- FI-01.** The Council’s actions have been made with the City’s best interest in mind. There was no evidence of wrongdoing. (FA-01-04, 06, 08, 17-18) [Ref-03, 10, 11, 14, 16, 22]
- FI-02.** PERC had a superior design and process that utilized six acres less land, created an aesthetic building and guaranteed financing for the project. (FA-05, 09-13, 15, 16, 19, 20, 23-29) [Ref-11, 16, 21, 27]
- FI-03.** Veolia had more building experience, a less sophisticated design and their projected user rate was lower. (FA-07, 12-14, 16, 21, 22) [Ref-10, 11]

## **Recommendations**

- R-01.** The Grand Jury recommends that the City take advantage of record low bond rates to purchase the City’s WWTP. (FI-01-02)
- R-02.** The Grand Jury recommends that the City immediately start the process to remove excess chlorides from the water. (FI-02)

## **Response**

Response Required From:

City Council, City of Santa Paula  
(FI-01, FI-02, FI-03), (R-01, R-02)

## **Commendations**

The 2012-2013 Ventura County Grand Jury would like to commend the City of Santa Paula Management and Staff for their knowledge and insight as well as their co-operation during this investigation.

## **References**

- Ref-01.** The Superior Court of California, County of Ventura. Case Summary. “PEOPLE OF THE STATE OF CALIF vs City of Santa Paula.” Case Number: 56-2007-00304441-CU-MC-VTA. September 24, 2007.
- Ref-02.** Rea, Marsha M. “Inquiring minds want to know.” Column. Santa Paula Times. August 24, 2012.
- Ref-03.** City of Santa Paula. Response to the Report. Fred Robinson, Mayor. September 7, 2011.



- Ref-04.** Kelly, Peggy. "\$470,000 fines, costs: S.P. City Council, BWQCB enter into WWTP consent decree." Santa Paula Times. August 10, 2007.
- Ref-05.** Kelly, Peggy. "Santa Paula's new water recycling facility officially completed." Santa Paula Times. December 15, 2010.
- Ref-06.** Santa Paula, CA. Santa Paula City Council. "*Special Meeting of the City of Santa Paula.*" DVD. April 15, 2008.
- Ref-07.** Santa Paula, CA. Santa Paula City Council. "*Special Meeting of the City of Santa Paula. Staff Report on Water Recycling Facility Requests For Proposal.*" April 15, 2008.
- Ref-08.** Santa Paula, CA. Santa Paula City Council. "*Special Meeting of the City of Santa Paula. Water Recycling Facility (WRF) – Selection of Team to Design, Build, Operate and Finance the new WRF.*" April 13, 2008.
- Ref-09.** Kelly, Peggy. "List Shortening, 2<sup>nd</sup> DBOF team pulls out of WWTP proposal process." Santa Paula Times. December 26, 2007.
- Ref-10.** FCS Group. Project Memorandum. April 2, 2008.
- Ref-11.** Carollo Engineers. Project Memorandum. April 1, 2008.
- Ref-12.** Staff writer. *Ventura County Star*. "Santa Paula responds to grand jury report over waste water treatment plant." September 8, 2011.
- Ref-13.** City of Santa Paula, Letter to Judge Vincent O'Neill. September 7, 2011.
- Ref-14.** Luna, Ray, Mayor. "A response to Sewer choice will cost S.P. more than necessary." Santa Paula Times. May 2, 2008.
- Ref-15.** City of Santa Paula. *Water Recycling Facility (WRF)*. Wally Bobkiewicz, City Manager. April 2, 2008.
- Ref-16.** The Suntag Law Firm. "Ventura County Final Grand Jury Report of Santa Paula City Council." Dana A. Suntag. June 30, 2011.
- Ref-17.** Kelly, Peggy. "City Council: PERC WWTP deal is done, or at least being finalized." Santa Paula Times. May 9, 2008.
- Ref-18.** Santa Paula, CA. Santa Paula City Council. "Regular Meeting of the City of Santa Paula." DVD. May 5, 2008.
- Ref-19.** Wilson, Kathleen. "Santa Paula Council OK's sewer plant contract: had cut cost of the project by \$24 million." Ventura County Star. May 6, 2008.
- Ref-20.** Wilson, Kathleen. "Santa Paula hires builder for sewer on 3-2 vote. Report shows another bidder would cost less." Ventura County Star. April 16, 2008.
- Ref-21.** City of Santa Paula. Water Recycling Facility DBOF Agreement Recommendation. May 4, 2008. Wally Bobkiewicz, City Manager.
- Ref-22.** Scheibe, John. "Santa Paula responds to grand jury report over wastewater treatment plant." Ventura County Star. September 8, 2011.

- Ref-23.** City of Santa Paula. "Design, Build, Operate and Finance Agreement between the City of Santa Paula, a municipal corporation and Santa Paula Water Services, LLC, a Delaware limited liability company." 2008.
- Ref-24.** City of Santa Paula. Final Acceptance of the Water Recycling Facility. February 15, 2011.
- Ref-25.** City of Santa Paula. "Water Recycling Facility DBOF Agreement with Pacific Environmental Corporation (PERC)." Wally Bobkiewicz, City Manager. April 25, 2008.
- Ref-26.** City of Santa Paula. "Water Recycling Facility DBOF Agreement with Pacific Environmental Resources Corporation (PERC)." April 25, 2008.
- Ref-27.** PERC. Risk Matrix. September 21, 2012.
- Ref-28.** Scheibe, John. "Santa Paula deals with financial stress-Staff cuts, pay reductions continue in city." Ventura County Star. June 25, 2011.
- Ref-29.** Kelly, Peggy. "Santa Paula City Council inches closer to deal." Santa Paula Times. May 2, 2008.
- Ref-30.** Rea, Marsha M. "Inquiring minds want to know." Column. Santa Paula Times. September 21, 2012.
- Ref-31.** Carollo Engineers. Memorandum, Santa Paula Water Reclamation Plant Completion Evaluation. February 9, 2011.
- Ref-32.** Newsletter. "with PERC." Brian D. Cullen, President. May 2, 2008.
- Ref-33.** Carollo Engineers. "Santa Paula Reclamation Plant Completion Evaluation." Toby Weissert, John Burriss and Graham Juby. February 9, 2011.
- Ref-34.** Santa Paula Water, LLC (PERC). "Chloride Summary." Dennis Kasper, Ph.D., P.E. May 25, 2010.
- Ref-35.** Nolan, Kelly. "California Debt Sale Proves Costly." Wall Street Journal. March 14, 2013.

**Glossary**

**TERM**

**DEFINITION**

BAFO	Best and Final Offer
City	City of Santa Paula
City Staff	Santa Paula City Staff
Class B Biosolids	The type of sludge that meets the United States Environmental Protection Agency guidelines for land application as fertilizer and restrictions
Consent Decree	Stipulated Consent Judgment and Final Order by the Ventura County Superior Court
Council	Santa Paula City Council
DBO	Design, Build and Operate
DBFO	Design, Build, Finance and Operate
FCS	FCS Group Financial Analysts
MBR	Membrane bioreactor filtration system
MGD	Million gallons per day
PERC	Pacific Environmental Resources Corporation and Santa Paula Water, LLC
RWQCB	California Regional Water Quality Control Board
Ultra-Turbulent Financial Period	The period in 2008 when there was a collapse in financial markets worldwide
Veolia	Veolia Water Operating Systems, Inc.
WWTP	Waste Water Treatment Plant

*This page intentionally blank*

